

**REMARKS**

Claims 1–11 and 16 are pending in this application. Non-elected claims 1–10 are withdrawn from consideration by the Examiner. By this Amendment, claim 11 is amended, claims 12–15 are canceled, and claims 16–20 are added. Support for the amendments to the claims may be found, for example, in the original claims and in paragraphs [0024] and [0034] of the specification. No new matter is added.

In view of the foregoing amendments and following remarks, reconsideration and allowance are respectfully requested.

**I. Rejection under 35 U.S.C. §112, Second Paragraph**

The Office Action rejects claims 11, 12, and 14 as being indefinite under 35 U.S.C. §112, second paragraph. By this Amendment, claim 11 is amended to recite further structural features of the base, and claims 12 and 14 are canceled. Accordingly, reconsideration and withdrawal of the rejection are requested.

**II. Rejections Under 35 U.S.C. §103**

The Office Action rejects claims 11 and 12 under 35 U.S.C. §103(a) over Hiroyoshi et al. ("Hiroyoshi") in view of Sugita et al. ("Sugita"); rejects claims 13–15 under 35 U.S.C. §103(a) over Hiroyoshi in view of Sugita and Koide et al. ("Koide"); and rejects claim 13 under 35 U.S.C. §103(a) over Hiroyoshi in view of Sugita and Akira et al. ("Akira"). By this Amendment, claim 11 is amended to incorporate the subject matter of claims 12 and 13, and claims 12–15 are canceled. To the extent that these rejections apply to newly amended claim 11, Applicants respectfully traverse the rejections.

Applicants respectfully disagree that Sugita provides the requisite reason or rationale to combine Hiroyoshi with either Koide or Akira. Submitted herewith is a Declaration that describes the Declarant's efforts to produce the skin patch according to Example 6 of Sugita. Preparations B and C correspond to Sugita's formulation, except in Preparation B, the active

ingredient of Sugita was replaced with 195 mg of 3-methyl-1-phenyl-2-pyrazolin-5-one (i.e. the active ingredient taught by Hiroyoshi, and Applicants' claim 11), and in Preparation C, the active ingredient of Sugita was simply omitted from the preparation. The Declaration indicates that both preparations came out in the form of a liquid with no viscosity and could not be spread on a non-woven polyester support. Thus, these preparations were completely unsuitable for an in vitro skin transmission test.

Accordingly, the Declaration provides evidence that patches as taught by Sugita cannot be suitably made with the active ingredient taught by Hiroyoshi. Therefore, not every cerebral protecting agent can be suitable administered in all of the preparations taught by Sugita, and Sugita provides no direction as to which cerebral protection agents may or may not be successfully used in its disclosed preparations. Hence, one of skill in the art would not have had a reasonable expectation that the active ingredient of Hiroyoshi could be successfully administered in all percutaneously administrable preparations. The Declaration further evidences that Sugita's base preparation with no active ingredient did not exhibit sufficient viscosity to be used as a base for a percutaneously administrable preparation suitable for a patch, thus calling into question the operability of Sugita's disclosure.

For at least these reasons, the obviousness rejection remains deficient. Applicants respectfully request reconsideration and withdrawal of the rejections.

### **III. New Claims**

By this Amendment, new claim 16–20 are added, which variously depend from claim 11. Because claim 16–20 require all of the elements of claim 11, they are believed to distinguish over the applied references for at least the reasons discussed above. Examination and allowance of claims 16–20 are respectfully requested.

**IV. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



James A. Oliff

Registration No. 27,075

Jeffrey R. Bousquet

Registration No. 57,771

JAO:JRB

Attachment:

Declaration Under 37 CFR §1.132

Date: February 4, 2010

**OLIFF & BERRIDGE, PLC**  
**P.O. Box 320850**  
**Alexandria, Virginia 22320-4850**  
**Telephone: (703) 836-6400**

**DEPOSIT ACCOUNT USE  
AUTHORIZATION**

Please grant any extension  
necessary for entry of this filing;  
Charge any fee due to our  
Deposit Account No. 15-0461